



Raised Bill 1154
Public Hearing: 4/1/13

TO: Members of the Judiciary Committee
FROM: Connecticut Trial Lawyers Association
DATE: April 1, 2013

**RE: SUPPORT FOR RAISED BILL 1154 – AN ACT CONCERNING
THE ACCIDENTAL FAILURE OF SUIT STATUTE**

The Connecticut Trial Lawyers Association (CTLA) hereby respectfully urges the members of the Judiciary Committee to pass Raised Bill No. 1154, "An Act Concerning The Accidental Failure of Suit Statute."

Raised Bill 1154 seeks to amend the Accidental Failure of Suit statute, in order to expressly extend the protection of the statute to medical malpractice lawsuits that have been dismissed because of insufficiencies in the Good Faith Certificate filed pursuant to C.G.S. § 52-190a.

As currently written, the statute applies to cases that have failed for a number of specific enumerated reasons, as well as to cases that have failed "for any matter of form." The phrase "any matter of form" is a catch-all phrase that can apply to a multitude of different factual situations. In order for a medical malpractice action to qualify under the Accidental Failure of Suite Statute, a trial judge must determine that the action failed "as a matter of form."

Repeated decisions of the Appellate Court have suggested that the Accidental Failure of Suit statute is, and should be, available to medical malpractice actions that are dismissed because of an insufficient good faith certificate pursuant to C.G.S. § 52-190a. However, since the "matter of form" language is not specific, the ultimate determination is left to the discretion of the trial court judge. This bill seeks to clarify the statute and to establish a bright line rule that would apply in all cases.

The proposed bill does not, in any way, expand the scope of liability for physicians in any given case. The plaintiff still must obtain a detailed good faith certificate from a similar health care provider in order to pursue the newly filed action following the dismissal of the original case. The bill ensures that the litigant with a meritorious case will not be denied an

adjudication on the merits of his case, simply because of technical insufficiencies that may have existed in the original certificate.

It previous years, those who have testified against legislation to correct the good faith certificate statute, have repeatedly represented to this Committee, and to the Legislature at large, that the good faith certificate statute does not require correction, since plaintiffs always have the ability to re-file their actions under the Accidental Failure of Suit statute. This proposed bill seeks to ensure that representation. Upon request, the CTLA would be happy to provide copies of this prior testimony from previous years.

Accordingly, the CTLA respectfully urges the members of this Committee to pass Raised Bill No. 1154.